

Mr Brennan had retired in May 1983 due to invalidity following the bursting of an intra-cranial aneurysm and subarachnoid haemorrhage. The Commissioner's delegate found in a medical textbook that aneurysms and subarachnoid haemorrhages are more common in association with hypertension and polycystic kidney disease (PKD), and concluded that the conditions listed on the certificate had caused or substantially contributed to the incapacity leading to Mr Brennan's retirement.

Mr Brennan challenged the finding. The Commissioner subsequently accepted that Mr Brennan's blood pressure was under adequate control, and relied only on the perceived statistical association between aneurysms and PKD.

After an extensive review of the medical and statistical evidence, the AAT, constituted by three members, concluded that the Commissioner bore the onus of proof and that he had not established that there was sufficient basis for the opinion that Mr Brennan's retirement was caused by one of the conditions specified on his BCC. There was no evidence of a direct medical connection in this case. Mr Brennan's blood pressure was under control and the aneurysm was acquired, not congenital. The Commissioner's decision was based entirely on deductions made from published statistics. The AAT concluded that their use was inappropriate and misleading in their application to Mr Brennan. The AAT therefore remitted the matter to the Commissioner with a direction that Mr Brennan's incapacity was not caused or substantially contributed to by a condition or conditions specified on his BCC.

Taxation: necessary findings of facts

East Finchley v Commissioner of Taxation (24 November 1989) was an appeal from a decision of the Administrative Appeals Tribunal upon an objection to an income tax assessment.

The Court set aside the AAT's decision because of the failure of the AAT to find the facts necessary to determine the matter, as it was required to do under section 43 of the Administrative Appeals Tribunal Act 1975. Justice Hill said that:

'Where the Tribunal's decision contains no findings on specific questions of fact which are material to the issue before it, the conclusion will ordinarily follow that the AAT has failed to direct its attention to considerations properly relevant to its determination and the proceedings before it will in such a case have miscarried. The Tribunal will have failed to deal, by reference to the relevant considerations, with a matter which arose for its determination and which it purported to determine.'

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Freedom of Information

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Effect on official advice to politicians

The Freedom Of Information Review for April 1990, pages 14-16 reports the evidence given by Mr Ian Macphie in the course of

the AAT hearing of his application for review of the Treasury's decision to delete material from the requested documents (Admin Review 24:37). Mr Macphee, formerly a senior Minister, discussed the nature of the relationship between a Minister and senior public servants, and the effect of the Freedom of Information Act 1982 on that relationship.

Mr Macphee expressed the view that exposure had increased the quality of advice from officials. He suggested that, even where the Minister has taken a different course of action from that advocated by his public service advisers, once an immediate point of contention is concluded and a decision made, it is in the public interest for as much information to be made available as possible.

#### Definition of prescribed authority

In Joint Coal Board v Cameron (26 October 1989) the Full Federal Court considered an appeal from a decision of the AAT. Mr Cameron had applied for workers' compensation in respect of injuries suffered during his employment at a colliery, for which the Board was the insurer. Under the Freedom of Information Act 1982, his solicitors sought copies of all accident reports that he had completed or signed. The Board refused the request on two grounds: first, that the Joint Coal Board was not established 'by, or in accordance with the provisions of, an enactment' and was therefore not subject to the FOI Act; and second, that the claim form for workers' compensation was an exempt document on the ground of confidentiality.

The Board is a joint Commonwealth and New South Wales authority, constituted under the Coal Industry Act 1946 (Cth) and the Coal Industry Act 1946 (NSW). Justice Davies noted that both Parliaments had established the Board as a corporation and as a government authority to the full extent of their respective legislative power. The Board thus derived its existence from the Commonwealth Act although not exclusively so, and was correctly classified as a prescribed authority for the purposes of the FOI Act.

The AAT had noted that the Board, and the colliery employers for whom the Board was the licensed insurer, considered that all compensation documentation forwarded by an employer to it was confidential. The Full Court decided that no breach of confidence could arise from the grant of access, in respect of a document, to the person who created the document. The Board's appeal was dismissed.

#### Freedom of Information Review

In order to assist Admin Review readers who are particularly interested in the area of freedom of information legislation and practice, it is noted that the Legal Services Bulletin Co-operative produces a regular publication known as the Freedom of Information Review (the FOI Review).



The FOI Review provides:

- . critical articles;
- . details of recent court and tribunal decisions in all jurisdictions;
- . notes on legislative amendments;
- . overseas developments in FOI;
- . recent national developments in FOI; and
- . reports on privacy issues.

Further information about the FOI Review can be obtained from:

Legal Services Bulletin  
Law Faculty  
Monash University  
CLAYTON VIC 3168

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The Courts

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Environment: standing to apply

The Australian Conservation Foundation v Minister for Resources (20 December 1989) concerned an application for review of a decision by the Minister to give an assurance to a Japanese woodchipping company that it would be permitted to export a certain quantity of woodchips each year for the next 17 years.